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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/775,042
Filing Date: February 01, 2001
Appellant(s): FILLEBROWN ET AL.

Robert D. McCutcheon (Reg. No. 38,717)
For Appellant

EXAMINER'S ANSWER

This is in response to the re-submission of appeal brief filed on March 17, 2009 appealing from the Office action mailed on April 4, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6356905	GERSHMAN ET AL.	3-2002
6108314	JONES ET AL.	8-2000
6397259	LINCKE ET AL.	5-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22, 30, 32-33, 36-37, 40, and 45-46 are rejected under 35 USC 103(a)

as being unpatentable over Gershman et. al. (US 6,356,905) (referred to as Gershman hereafter) further in view of Jones et al, U.S. Patent Number 6,108,314 (hereinafter Jones)

As per claim 1, Gershman teaches the process of receiving a data packet having data at a first device capable of communicating with a second device; associating the data with one of a plurality of software applications executing on the first device; generating information in response to processing by the one software application; receiving said information on the second device and producing a display on the second device; and where the first and second device performing transmissions to one another simultaneously (column 34, lines 56-64, column 50, lines 17-55, column 51, lines 1-18 and column 56, line 5-column 57, line 4); communication over the networks such as the Internet and/or Intranet, however the applied reference does not explicit disclose the use of a wireless router. It would have been readily apparent at the time the invention was made given the teachings of Gershman for transmitting over the Internet and/or the Intranet that network access system enables access to mobile computer comprises at least interconnecting devices such as routers, gateways, bridges, hubs, switches, and routers forming a computer network and/or a collection of computer networks, e.g. the Internet. Jones, in the same field of endeavor, teaches a system and method for mobile computer or devices to communicate over a wireless using a plurality of routers (see home network 10, laptop 11, content provider 55 connected via wireless network using wireless routers 30, 32). Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Garshman in

view of Jones by implementing the system using wireless routers because doing so would have enabled the Garshman's disclosure to operate with less amount of turn-around time. One of ordinary skill in the art would have been motivated to modify Garshman in view of Jones, since Jones suggests that the use of wireless routers in a system similar to that of Garshman can reduce the processing turn-around time between content servers and mobile devices. The combination of Jones and Garshman does not explicitly show that the first and second devices performing wireless transmissions to one another through a wireless router, wherein performing wireless transmissions to one another through the wireless router further comprises, providing a first wireless communication link between the first device and the wireless router in accordance with a first wireless protocol, and providing a second wireless communication link between the wireless router and the second device in accordance with a second wireless protocol. However, Jones suggests the process of providing a wireless communication link between the first device and the wireless router in accordance with a first wireless protocol (see col.2, lines 35-53, broad band channel); providing a wireless communication link between the wireless router and the second device in accordance with a second protocol (see col. 2, lines 54-67, satellite links, FDDI wireless interface 231). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combination of Jones and Garshman to arrive at the claimed invention, because doing so would have enabled the combination of Jones and Garshman to implement the processing in a flexible manner.

Regarding claim 2-8 wherein the software applications executes on the wireless server (column 34, line 65-column 35, line 12) and in background (column 2, lines 18-24 and column 10, lines 26-66. Garshman does not explicitly show wherein performing wireless transmissions to one another through the wireless router further comprises, providing a first wireless communication link between the first device and the wireless router in accordance with a first wireless protocol, and providing a second wireless communication link between the wireless router and the second device in accordance with a second wireless protocol. However, Jones suggests the process of providing a wireless communication link between the first device and the wireless router in accordance with a first wireless protocol (see col.2, lines 35-53, broad band channel); providing a wireless communication link between the wireless router and the second device in accordance with a second protocol (see col. 2, lines 54-67, satellite links, FDDI wireless interface 231). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combination of Jones and Garshman to arrive at the claimed invention, because doing so would have enabled the combination of Jones and Garshman to implement the processing in a flexible manner.

Regarding claims 9-14, 18, 20-22, 32, Gershman discloses the step of converting discloses data packet into data stream, and further into audio and video stream (column 44, lines 1-15, and column 45, lines 50-65).

Regarding claims 15-17, for claiming wireless protocol is Bluetooth protocol and also IEEE 802.11 protocol, it would be inherent to skilled artisan in the wireless networking

including devices such as PDA, that communication over wireless link uses a standard communication protocols, such as the IEEE standard 802.11 or an emerging wireless communication protocol referred to by the name Bluetooth".

Regarding claim 19, wherein the wireless server simultaneously executes multiple instances of the software application, Gershman discloses an electronic valet 2602, which executes many different software applications as on column 50, lines 28-55.

Regarding claim 30, for comprising displaying registration page, Gershman discloses "Gatekeeper" for interfacing media subsystem, as on column 45, lines 51-64.

Regarding claims 33, 36-37, 40, 42 and 43 are claiming similar subject matter in various format of method claim 1, therefore are rejected for similar reasons.

As per claim 45-46, Jones teaches the first and second devices performing wireless transmissions to one another through a wireless router (see elements 12-13, 32, 55), wherein Jones teaches providing a wireless communication link between the first device and the wireless router in accordance with a first wireless protocol (see col.2, lines 35-53, broad band channel); providing a wireless communication link between the wireless router and the second device in accordance with a second protocol (see col. 2, lines 54-67, satellite links, FDDI wireless interface 231). Jones further teaches the process of amplifying the packet and transmitting the packet or not amplifying the received wireless transmission (see col. 3, line 49 to col. 4, line 26). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify

the combination of Jones and Garshman to arrive at the claimed invention for the same reasons set forth in claim 1, *supra*.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-22, 30, 32-33, 36-37, 40, and 45-46 are further rejected under 35 U.S.C. 102(e) as being anticipated by Lincke et al., U.S. Patent Number 6,397,259 (hereinafter Lincke).

Lincke discloses a system and method for transferring packet data between a first wireless web server device 140 to a second wireless device 100 via a wireless router 180. Lincke discloses the invention substantially as claimed. Taking claim 1 as

an exemplary claim, Lincke discloses a method for processing a packet in a wireless network (see fig. 1), comprising: receiving a data packet having data therein at a first device (server 140) capable of wirelessly communicating with a second device (100); associating the data with one of a plurality of network enabled software applications executing on the first device (web application executing on web server 140) and generating display information in response to processing by the one of the plurality of network enabled software applications for use by the second device in producing a display on the second device (see figure 1, browser 104 running on device 100; the browser 104 displays the response wireless application 107 on the wireless device 100); and the first and second devices performing wireless transmissions to one another through a wireless router (see fig. 1, wireless server 140 performs wireless transmission to wireless device 100 through a wireless router 180; the proxy 180 operates and functions as a wireless router). Lincke further teaches wherein performing wireless transmissions to one another through the wireless router further comprises, providing a first wireless communication link between the first device and the wireless router in accordance with a first wireless protocol (see CTP, col. 11), and providing a second wireless communication link between the wireless router and the second device in accordance with a second wireless protocol (see TCP/IP or HTML columns 11-12).

As per claim 2, Lincke discloses the method of claim 1 wherein the software application executes on a wireless server (see HTML page 144 executed and displayed on web server 140).

As per claim 3, Lincke discloses the method of claim 1 wherein the software application executes in the background (see CGI is executed in the background on server 140).

As per claim 4, Lincke discloses the method of Claim 1 further comprising using the data to update the software application (see col. 9, line 30 to col. 10, line 47, any new program downloaded from the server 140).

As per claim 5, Lincke discloses the method of claim 1 further comprising converting the data packet into a data stream (see col. 12, lines 1-26).

As per claim 6, Lincke discloses the method of Claim 1 wherein the data is a command that causes the program to perform a predetermined operation (see col. 109, line 50 to col. 110, line 56).

As per claim 7, Lincke discloses the method of claim 1 wherein a transmitter comprising the first device receives the data packet (see server 140 operations).

As per claim 8, Lincke discloses the method of Claim 1 further comprising compressing the data packet (see col. 10, lines 49-59 compress packets).

As per claims 9-14, and 20-22, 30 and 32, Lincke discloses the method of Claim 1

further comprising generating a video stream indicative of a visual display, the visual display associated with the software application, compressing the video stream, and organizing the video stream into at least one video packet, and transmitting the video packet via a wireless protocol (see figures 2-3, col. 19, lines14-50).

As per claims 15-17, for claiming wireless protocol is Bluetooth protocol and also IEEE 802.11 protocol, it would be inherent to skilled artisan in the wireless networking including device 100 such as PDA, that communication over wireless link uses a standard communication protocols, such as the IEEE standard 802.11 or an emerging wireless communication protocol referred to by the name Bluetooth".

As per claims 45-46, Lincke discloses the method of Claim 1 wherein the first and second devices performing wireless transmissions to one another through a wireless router comprises: providing a wireless communication link between the first device and the wireless router in accordance with a first wireless protocol; and providing a wireless communication link between the wireless router and the second device in accordance with a second wireless protocol; and amplifying the packet and transmitting the packet or not amplifying the received wireless transmission (see col. 15, lines 22-59, col. 16, wireless network topology section).

(10) Response to Argument

Appellants' arguments filed on March 17, 2009 have been fully considered but they are not persuasive. As per appellants arguments filed on March 17, 2009, the appellants The applicant argued in substance that Lincke fails to disclose that its web server 120 performs wireless transmissions to the communications device 100. The web server 140 is illustrated in Figure 1 as communicating with a proxy server 180 which communicates with a base station 170 - all utilizing wired communications.

In reply, Lincke discloses the communications using both the wireless and wire-line transmissions (see col., 12, line 34-63, wireless device 100 communicating with the web content server TCP/HTTP or HTML the proxy server 180 which is accessed via wireless connection). It is irrelevant whether Lincke teaches the additional step of wired transmission or not. Since the claims call for "the method... comprising....". The term comprises is inclusive and fails to exclude unrecited steps. *In re Horvitz*, 168 F 2d 522, 78 U.S.P.Q. 79 (C.C.P.A. 1948). The use of the term comprising to introduce the claimed structure means that the device covered by these claims may involve many more elements than those positively recited. *Ex parte Gotztein et al.*, 168 U.S.P.Q. 176 (*PTO Bd. App. 1969*). Comprising leaves the claim open for the inclusion of unspecified ingredients even in major amounts. *Ex parte Davis et al.*, 80 U.S.P.Q. 255 (C.C.P.A. 1931).

The appellants further argued that Garshman does teach "associating the data with a one of a plurality of network enabled software applications executing on the first

device and generating display information. In reply, Garshman discloses associating the data with a one of a plurality of network enabled software applications executing on the first device and generating display information in figures 1-2 and column 34, lines 56-64. Greshman discloses "a suite software agents running on the application and web servers are programmed to take care of repetitive or mundane tasks for the user..".

The appellants further argued that examiner fails to provide any reasoning to support that the specific use of the wireless router in Jones should be combined with Gershman. In reply, In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gershman discloses the first and second device performing transmissions to one another simultaneously (column 34, lines 56-64, column 50, lines 17-55, column 51, lines 1-18 and column 56, line 5-column 57, line 4), and Gershman discloses establishing communication over's the networks such as the Internet and/or Intranet; however, Gershman does not explicit disclose the use of a wireless router. Jones, in the same field of endeavor, teaches a system and method for mobile computer or devices to communicate over a wireless using a plurality of routers (see home network 10, laptop 11, content provider 55 connected via wireless network using wireless routers

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30, 32). Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Garshman in view of Jones by implementing the system using wireless routers because doing so would have enabled the Garshman's disclosure to operate with less amount of turn-around time.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Zarni Maung/

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